

STATE OF INDIANA
COUNTY OF MARION

) BEFORE THE INDIANA
) SS:
) COMMISSIONER OF INSURANCE
Cause Number: 7384-AG09-1102-227

IN THE MATTER OF:

)
)
) Fort Wayne Title,
) 6203 CONSTITUTION DRIVE
) FORT WAYNE, Indiana 46807
) License No.: 586715
) Respondent/Producer
)

And
)
)

) Joseph A. Garretson,
) 11231 CHESNUT RIDGE CT
) FORT WAYNE, Indiana 46814
) License No.: 426795
) Respondent/Producer
)

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STATE OF INDIANA
DEPT. OF INSURANCE

ORDER GRANTING EMERGENCY CEASE AND DESIST ORDER

The Indiana Commissioner of Insurance, having reviewed the Title Insurance Division's Petition for Emergency Cease and Desist Order, and being otherwise duly advised, now finds as follows:

FINDINGS OF FACT

1. The Department of Insurance is authorized to regulate the practice of title insurance in Indiana under Indiana Code 27-1 *et al.*
2. On November 2, 2009, David A. Morgan ("Morgan") received a call from a homeowner in Allen County, Indiana stating that he had refinanced his house and

used the title insurance, settlement and escrow services of Respondents to close the real estate transaction.

3. The homeowner also stated that he just learned that his previous mortgage was never satisfied from the proceeds of the refinance transaction as stated on the HUD-1 Settlement Statement.

4. On November 2, 2009, the Commissioner of the Indiana Department of Insurance issued a formal "Market Conduct Examination Warrant" (the "Warrant") to Fort Wayne Title and Garretson, which was to commence on November 3, 2009.

5. Morgan personally served the Warrant to the Respondents on November 3, 2009.

6. The Warrant called for a market conduct examination of the title insurance activities of Respondents generally and specifically called for an examination of Respondents' records to determine if Respondents were in compliance with Standard 4.

7. Standard 4 of the Warrant is to reviews documents to ensure that "escrow accounts are used only to receive and disburse funds as they relate to a real estate closing," and is intended to evaluate if a title insurance licensee is acting as a fiduciary in its duty to properly distribute funds collected for the purpose of a real estate transaction.

8. Garretson and Fort Wayne Title refused to provide Morgan with all of the documents requested to determine if Respondents comply with Standard 4 and Respondents also refused to allow Morgan to review the closing file of the complaining homeowner.

9. On or about November 4, 2009, the Commissioner of the Indiana Department of Insurance signed an emergency ordering suspending the insurance producer licenses of Fort Wayne Title and Garretson, which prevents Respondents from engaging any further activities related to title insurance, which includes collecting, disbursing and transferring any funds into or out of a title insurance escrow or trust account.

10. Since the insurance producer licenses of Respondents were suspended on an emergency basis, the Department has become aware of an additional homeowner who closed with Respondents and whose prior mortgage was not paid of and released in accordance with the lender instructions, title commitment and HUD-1 Settlement Statement.

CONCLUSIONS OF LAW

11. An urgent situation exists in that the nature and level of non-cooperation with the market conduct exam and the serious allegations contained within the consumer complaints the Department have received rises to the level of an emergency.

12. Faced with failure of Respondents to cooperate with the market conduct examination, Ind. Code § 27-1-3.1-9 authorizes the Commissioner to take extraordinary procedures to insure the completion and accuracy of the market conduct examination.

13. Additionally, collecting, distributing or transferring any monies from a title insurance escrow or trust account after a licensee has failed to cooperate with a market conduct examination, pursuant to Ind. Code § 27-1-3.1 *et seq.* and after a licensee has had its title insurance producer license suspended on an emergency basis is considered to be an additional method of unfair competition as defined in Ind. Code §27-

4-1-8 and Ind. Code § 27-4-1-6 empowers the Commissioner of the Indiana Department of Insurance to issue a cease and desist order prohibiting this business practice and order civil penalties.

14. In an emergency, the Commissioner may issue appropriate orders without notice or an evidentiary proceeding under Indiana Code 4-21.5-4-2(a), which states in relevant part:

The agency shall issue the order under this chapter by one (1) of the following procedures:

- (1) Without notice or an evidentiary proceeding, by any authorized individual or panel of individuals.

ORDER

It is, therefore, ORDERED, that Respondents, Fort Wayne Title and Joseph A. Garretson, must CEASE AND DESIST from collecting, distributing or transferring funds from any title insurance escrow account and Respondents cannot close any title insurance escrow or trust accounts and/or receive the proceeds thereof in any fashion.

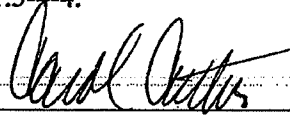
Respondents are further ORDERED that they must inform any depository or lending institution where Respondents have a title insurance escrow or trust that it must hold any funds held in escrow until the issues contained within the market conduct examination and the consumer complaints are resolved.

Furthermore, it is ORDERED that Respondents must inform any lending or depository institutions in which he holds an escrow or trust account that Respondents are not permitted to collect further funds, receive any monies associated with a real estate closing, distribute, transfer or wire funds, write checks out of the escrow account, or

otherwise electronically move monies held in a title insurance escrow or trust account until such time that the market conduct examination is completed.

Pursuant to Indiana Code §4-21.5-4-2, this order remains effective for 90 days, commencing on the date this order is issued.

Respondents are hereby notified of their right to a hearing concerning this order as quickly as practicable under Ind. Code § 4-21.5-4-4.



Carol Cutter
Commissioner of Insurance

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